



ITEM NO. 6

## STAFF REPORT

DATE: JULY 5, 2011  
TO: HONORABLE MAYOR AND CITY COUNCIL  
FROM: ROD FOSTER, CITY MANAGER/EXECUTIVE DIRECTOR  
PREPARED BY: MARK TOMICH, DEVELOPMENT SERVICES DIRECTOR  
SUBJECT: APPROVE PROFESSIONAL SERVICES AGREEMENT WITH RBF CONSULTING TO EXTEND THE TERM FOR COMPLETION OF A HABITAT CONSERVATION PLAN (HCP) FOR THE DELHI SANDS FLOWER-LOVING FLY (DSF) AREA.

A handwritten signature in blue ink, likely of Rod Foster, the City Manager.

### RECOMMENDED ACTION

It is recommended that the City Council approve the First Amendment to provide additional funding and to extend the term of the Professional Services Agreement ("PSA") with RBF Consulting for completion of the DSF HCP.

### GOAL STATEMENT

The proposed action will support the City's goal to complete major projects, including the Habitat Conservation Plan for the Delhi Sands Flower-loving Fly.

### BACKGROUND

A Professional Services Agreement ("PSA") with RBF Consulting was approved on August 3, 2010 to continue work on the DSF HCP. The contract with RBF was necessary because of the transfer of the primary biologist and author of the HCP, Thomas McGill, to RBF from a previous employer. Starting in July 2010, staff re-initiated negotiations with the U.S. Fish & Wildlife Service ("FWS") to adjust the HCP boundaries, determine habitat quality throughout the HCP area, and reach tentative agreement on which lands need to be preserved and which areas can be released for development. To support the negotiations with recent, reliable biological data, the City conducted focused DSF surveys during the summer of 2010.

Based on changes in the conservation strategy, including revised locations of West Valley lands targeted for conservation, the draft HCP (previously prepared in 2008) has been revised and submitted to FWS. Staff is awaiting a response from FWS to the revised draft HCP, and continuing with the remaining steps in the HCP process, including:

- Development of off-site mitigation strategy to achieve agreed-upon mitigation ratios.
- Plan for habitat restoration, management and monitoring.
- Strategy to address unforeseen and changed circumstances.
- Funding and implementation plan.

- Re-submitting draft HCP to FWS for internal review.
- Implementing Agreement(s).
- Environmental Assessment (NEPA).
- Issuance of "Incidental Take" (10a) permit by FWS.

## **ISSUES/ANALYSIS**

Due to the remaining steps identified above, a term extension to June 30, 2012 is needed to complete the HCP and receive necessary permits to allow development to occur. Staff anticipates that the remaining steps can be completed within the revised contract term (i.e., July 1, 2011 to June 30, 2012).

Additional costs have been incurred due to re-entering negotiations with FWS, including focused onsite surveys, and restructuring of the DSF conservation strategy. Remaining work, which was not anticipated in the existing contract, will include an additional draft HCP, final HCP, and several additional meetings with FWS. The fee for the additional work by RBF Consulting is \$19,992. Additional costs, beyond this amendment, will not be incurred without consideration and approval by the City Council.

## **FISCAL IMPACTS**

This amendment will increase the contract amount by \$19,992 (to a cumulative amount of \$55,792). Amendment funds are budgeted in Redevelopment Agency Administration Account No. 886-9000-9000-2350.

## **ALTERNATIVES**

1. Not extending the term of the contracts for the Consultant will result in the project not being completed.
2. Provide alternative direction to staff.

## **ATTACHMENTS**

PSA Amendment #1, RBF Consulting

**FIRST AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN THE CITY OF COLTON  
AND  
RBF CONSULTING**

**1. PARTIES AND DATE.**

This First Amendment to the Professional Services Agreement ("First Amendment") is made and entered into this 5<sup>th</sup> day of July 2011 by and between the City of Colton ("City") and RBF Consulting, a California Corporation, with its principal place of business at 3300 East Guasti Road, Suite 100, Ontario, CA 91761 ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this First Amendment.

**2. RECITALS.**

2.1 Agreement. City and Consultant entered into that certain Professional Services Agreement dated August 3, 2010 ("Agreement"), whereby Consultant agreed to provide Habitat Conservation Plan services for the Delhi Sands Flower-loving Fly ("HCP").

2.2 Amendment. City and Consultant desire to amend the Agreement for the first time to revise the draft HCP, prepare Final HCP, attend meetings, increase compensation by \$19,992.00 (as described on Exhibit A to First Amendment), and extend term to June 30, 2012.

**3. TERMS.**

3.1 Scope of Services and Term, of the Agreement is hereby deleted in its entirety and replaced with the following:

3.1.1 "Exhibit A is hereby deleted in its entirety and replaced with Exhibit A attached hereto and incorporated herein by reference."

3.1.2 "The term of this Agreement shall be from July 5, 2011 to June 30, 2012, unless earlier terminated as provided herein. Consultant shall complete the services within the term of this Agreement, and shall meet any other established schedules and deadlines."

3.2 Responsibilities of Consultant, Subsection 3.2.2 Schedule of Services, of the Agreement is hereby deleted in its entirety and replaced with Exhibit A attached hereto and incorporated herein by reference.

3.3 Fees and Payments, Subsection 3.3.1 Compensation, of the Agreement is hereby modified as follows:

3.3.1 "Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated by reference. The total compensation, including First Amendment, shall not exceed Fifty Five Thousand Eight Seven Hundred Ninety Two Dollars (\$55,792) without written approval of the City Council. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement."

3.4 Continuing Effect of Agreement. Except as amended by this First Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this First Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this First Amendment.

3.5 Counterparts. This First Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

**[SIGNATURES ON FOLLOWING PAGE]**

**CITY OF COLTON**

**RBF CONSULTING**

By: \_\_\_\_\_  
Rod Foster  
City Manager

By: \_\_\_\_\_  
Thomas McGill, PhD  
Vice President

*Attest:*

\_\_\_\_\_  
City Clerk

\_\_\_\_\_

*Approved as to Form:*

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney



# Exhibit A

JN 65-100709  
Request No. 1  
Date: 5-05-2011



## ADDITIONAL WORK REQUEST SUMMARY

**Client:** City of Colton

**Work Requested By:** Mark Tomich

**Summary of Additional Work:** Remaining Tasks for Completing the DSF HCP

**Estimated Fee for Additional Work:** \$19,992

The original budget of \$34,800 was for RBF to resume the negotiations with USFWS that broke off 2 years ago, start the discussions with the two DSF biologists identified for developing a DSF habitat restoring program and revise the internal draft of the HCP, submit it to USFWS, and make edits as needed based on their review (it normally takes several 3 to 4 iterations with USFWS to come to an agreeable conservation strategy) and finalize the HCP.

As part of the initial efforts to revise the draft HCP, the new City Manager and Planning staff at the City of Colton met with the new regional director, Ken Corey, and the new area manager, Jenness McBride, of USFWS. The City hosted several meetings with USFWS and RBF to readjust the Plan boundaries (specifically to now include the cemetery), to discuss and agree upon the quality of habitat throughout the HCP area, and to engage in a running dialogue and negotiations of what lands need to be preserved and what lands could be developed under the revised HCP. The City conduct focused surveys of the King-is-Coming site and adjoining properties during the 2010 DSF survey season. The unplanned cost of the focused surveys was \$11,757, excluding any cost for RBF to oversee the focused surveys. RBF absorbed all of the focused survey costs.

A tentative conservation strategy was agreed upon and the previously prepared HCP was revised to incorporate the new strategy. The draft has been submitted to the City for review. This new draft has been developed in close discussions and negotiations with USFWS and represents a substantial change from the old draft that had been developed primarily by the City to meet its needs for developing the West Valley Specific Area .

At the city's request, USFWS has agreed to restructure their conservation requirements in order to further reduce mitigation costs and will present a revised set of conservation measurements them to the City within the next few weeks. These changes will then be incorporated into the revised internal draft and that draft will then be submitted to USFWS for review. Following its review, USFWS will offer their comments on the draft HCP. The draft will then be revised in response to their comments. Although this process of review, comment and revision normally takes several iterations before a final HCP is completed and a Section 10 (a) permit issued to the City, based on the extensive meeting between the City and USFWS we are anticipating only two iterations.

RBF has scoped the remaining efforts needed to revise the internal draft so that it can be submitted to USFWS and to prepare two additional iterations of the HCP, including a final HCP, to be **\$19,992** as broken out below in a series of tasks.

**Task 1: Revise Draft HCP**

Make revisions to the previously prepared draft HCP (May 2011) based on the results of an agreed upon reduction in conservation requirement that is being developed by USFWS.

*Costs \$9,624*

**Task 2: Prepare Final HCP**

Following the first draft, RBF will prepare up to two additional HCP, including a second draft and a Final HCP, in response to USFWS comments and requirements.

*Costs for the first iteration: \$4,812.00*

*Costs for a second iteration: \$2,856.00*

**Task 3: Attend meetings with USFWS**

RBF will attend several additional meetings with USFWS and have included some costs, if needed, for attending meetings:

*Costs \$2,700.00*

Prepared By: Thomas J. McGill, Ph.D, Vice President

Authorized By: \_\_\_\_\_

**EXHIBIT "B"**

**SCHEDULE OF SERVICES**

July – September 2011,  
Revise Draft HCP.

September 2011 – March 2012

Completion of Final HCP and processing two iterations of the final document, including  
10 (A) Application.